IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6222 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULABSINH RUPSINGH ZALA

Versus

UMARBHAI JIVABHAI HIS HEIRS

Appearance:

MR GIRISH D BHATT for Petitioner Nos. 1-12

MR AKIL KURESHI for Respondent No. 1-6/4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. In the present matter, the petitioners have filed various Civil Applications for bringing heirs of some of the deceased respondents and heirs of certain petitioners on record and this Court had already granted all the Civil Applications. The office may amend the

cause title of the present petition accordingly. The matter is now taken up for final hearing today.

2. By filing this petition, the petitioners have challenged the order dated 31.1.1991, passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 597 of 1988, by which the revision application filed on behalf of the present petitioners is dismissed by the Tribunal.

3. The present petitioners had leased the suit land, being Survey No.16 Paiki, admeasuring 92 acres and 11 gunthas of Village Padusan, Taluka Prantij, District Sabarkantha, for 25 years and the same was thereafter extended for a further period of 51 years at the yearly rent of Rs.231/-. Originally, the lease was given to the predecessors of the present respondents. The respondents herein thereafter gave an application to the Mamlatdar and ALT on 13.1.1978 under Sections 25 and 79 of the Bombay Tenancy and Agricultural Lands Act, 1948, for a declaration to the effect that they may be declared as tenants of the agricultural land in question. The Mamlatdar and ALT, by order dated 22.1.1980, allowed the said application, upholding the right of the tenants. The said order was taken in appeal at the instance of the present petitioners. The Assistant Collector dismissed the said appeal. Thereafter, the matter was taken in revision before the Gujarat Revenue Tribunal. The Tribunal also dismissed the said revision application, being Revision Application No.TEN.B.A. 832 of 1980, on 3.9.1985. Subsequently, the respondents initiated proceedings under Section 32-G of the Tenancy Act for declaring them as `tenants' of the aforesaid agricultural land. The Mamlatdar thereafter, by his order dated 23.11.1987, held that the respondents were "deemed purchasers" of the suit land and passed an order, fixing the purchase price accordingly. The aforesaid order of the Mamlatdar, declaring the respondents as "deemed purchasers", was challenged by the present petitioners by way of appeal, being Tenancy Appeal No.5 of 1988. The same was decided by the Deputy Collector, Himatnagar, who dismissed the same on 23.5.1988. The said order was challenged by filing revision application, being Revision Application No.TEN.B.A. 597 of 1988. The Tribunal, by its order dated 31.1.1991, also dismissed the said revision application. The said order is impugned in the present Special Civil Application.

4. At the time of the hearing of this Special Civil Application, it is argued by Mr.G.D. Bhatt, learned Advocate for the petitioners, that, originally, the land

was given to the tenants for the purpose of plucking berry fruits and, therefore, the respondents are not entitled to be treated as "deemed purchasers", as it cannot be said that they were carrying on any agricultural operation or activity. He, therefore, submitted that the respondents are not entitled to purchase the land as "deemed purchasers", as they cannot be held to be deemed purchasers under the Bombay Tenancy Act. It is, therefore, submitted that the order of the Tribunal may be set aside and the original application of the respondents, by which they sought for an order under Section 32G may be dismissed.

5. In order to substantiate his say, Mr.Bhatt has relied upon the judgment of the Apex Court in Sakharam Shripati Jadhav v. Chandrakant Laxman Agnihotri, AIR 1987 SC 637. In the aforesaid judgment, the Apex Court has observed in paragraphs 22 and 23 as under :-

> " ... ...
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> 22. The question is if lease for multiple cultivation is permissible in the scheme of S.43A then only leases of the areas for cultivation of sugarcane or growing of fruits or flowers or for breeding of livestock could claim the benefit of protection from the tenants' claim. This has to be borne in mind. With respect, we cannot accept the ratio of the decision of the Bombay High Court in its entirety. We are aware that sugarcane could not be cultivated in the entire field for the whole year. It has to be kept fallow and crops had to be grown in the meantime to increase the fertility. But what was primary and what was secondary and what was to be done in such a case as we found it as a fact, has to be considered.
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> 23. As mentioned hereinbefore, this petition is concerned with the proceeding under S. 43B of the said Act which questioned before the High Court the order made by the Member. Maharashtra Revenue Tribunal refusing to interfere with the order made by the Special Land Acquisition Officer (II) Tulsi Project, Kolhapur, holding that the purpose of the lease so far as the suit land was concerned was one for cultivating sugarcane and as such the

lands were governed by the provisions of S.43A of the Act. Having regard to the facts and circumstances enumerated before, we are of the opinion that the area which is in dispute in this case comprised of areas leased for raising sugarcane crop as also for other crops. In view of the provisions of law discussed above, in so far as the High Court upheld the finding that the entirety of the area in question was covered by lease for sugarcane, it is difficult to sustain the same. The area was covered by lease for multiple purposes. Some areas were leased out for sugarcane where along with sugarcane other crops were grown. These, however, should be included as areas leased for sugarcane as ancillary crops or for better utilisation of the land in question. But, here the leases covered areas other than the areas contemplated by sugarcane which could be demarcated in terms of the Kabulayat which we have discussed before. In our opinion, having regard to the preamble to the Act and the primary purpose of the Act, it would be necessary to remand the matter back to the High Court for remanding it back to the appropriate officer to determine whether there was any area which was leased exclusively for sugarcane crop. If it is held on such enquiry that the entirety of the area was for the sugarcane crop, then the order of the Tribunal made in this case cannot be interfered with. If, on the other hand, there are areas which were leased out separately and independently of the leasing out for sugarcane and demarcated separately, then in respect of the same, no exemption can be given in derogation of the rights of the agricultural tenants in those leased areas and the appellant would be entitled to succeed. In a lease for composite purposes, if there was any area where sugarcane was only cultivated, that area would be exempt from the ambit of the provisions of the Act and would be exempted. If, however, along with cultivation of sugarcane, other crops were cultivated on the area, such an area would not be entitled to exemption. We therefore

> remand the case with directions that the authorities below should find the position in light of the aforesaid. It may be observed that the Bombay Tenancy and Agricultural Lands Act, 1948 was enacted with a high purpose of transferring the land tilled to the tillers of the soil with the exceptions of the lands which were leased out for growing sugarcane because of the need for protection of the industry of sugarcane and development of the economy.
>
> ... ..."

Relying upon the aforesaid judgment, it is submitted by Mr.Bhatt that since as per the lease deed, the lease was given only for the purpose of plucking berry fruits, the tenant is not entitled to get benefit of "deemed purchaser", under the Tenancy Act, as it cannot be said that he is doing any agricultural activity in the disputed land.

6. Mr.Akil Kureshi, learned Advocate who is appearing for the respondents, has submitted that all the three authorities, on appreciation of evidence, have come to the conclusion that the lease in question is a composite lease and that the original tenant was permitted even to carry out agricultural activities also, over and above growing berry trees or plucking berry fruits. He, therefore, submitted that since the lease in question is a composite lease, the authorities have rightly held that the tenant / tenants, were entitled to purchase the land under the provisions of the Tenancy Act and were rightly declared as "deemed purchasers". He further submitted that this Court, while exercising powers under Article 227 of the Constitution of India, cannot re-appreciate the entire evidence again, which is appreciated by all the authorities below. He also further submitted that even if the evidence is re-appreciated, then also, no view other than the one taken by the authorities below is possible. Mr.Kureshi has relied upon the decision of this court in Vaghri Khodabhai Hasubhai v. Mohmedhusen Abdulbhai Bakarwala, 1982(1) GLR 141. Examining the scheme of the Act, as well as considering the nature of the lease of the aforesaid case, this Court has observed as under :-

> " ... ...
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> 16. Mr.Patel for the respondent invited my attention to a judgment of this court in

Shantilal Ratanji Desai and another v. Mangubhai Chhotubhai Desai and another, 10 G.L.R. 500, wherein J.B. Mehta, J. while interpreting sec. 43A of the Tenancy Act observed as under :-

> "Sec. 43A(1)(b) of the Bombay Tenancy and Agricultural Lands Act in terms provides that the provisions of secs. 32 to 32R were not applicable to leases of lands granted to any bodies or persons other than those mentioned in clause (a) for growing of fruits. The exemption provided for in sec.43A(1)(b) would be attracted if the lease of land granted to any such person is shown to be for the growing of fruits. The purpose of grant of lease is the material factor for determining whether this exemption is attracted or not. It is clear that the Legislature contemplates a fixed factor being taken into account viz., the purpose for which the lease of the land was granted. The subsequent use, if any, for any other purpose would be wholly immaterial.
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> What is material is the purpose at the time of granting the lease and so the date of letting would be material to find out what was the purpose when the grant was made. Even if the tenant changed the original user by cultivating some part, the purpose of letting would not change and, therefore, the exemption would still be attracted if the land was found to have been let for the purpose of fruit growing".

The aforesaid decision cannot help Mr.Patel for the simple reason that in the present case, the lease in question has been found to be not for the sole or main purpose of growing fruits or flowers but it has been found to be for a mixed purpose of cultivation of crops and incidentally also

for putting up in future fruit bearing trees, if the tenant so desired. Under these circumstances, at the highest, it can be said that the lease was for a mixed purpose and in no case the purpose enabling the petitioner-tenant to rear in future fruit bearing trees can be said to be the dominant purpose of the lease at all. The aforesaid decision of this court would have been effectively pressed in service by Mr.Patel if the lease in the present case would have permitted the tenant only to put the land in question to the use of rearing up of fruit bearing trees and if cultivation in a portion of the land would have been permitted only with a view to make fruit trees more productive. The aforesaid decision could have been pressed in service by Mr.Patel also in case it was found that the lease in question did not permit cultivation at all but only permitted the tenant to rear up fruit trees in the land in dispute and subsequently the tenant unauthorisedly had changed the user of the land by resorting to cultivation thereon. Such is not the case here. In the present case, the lease in terms permitted the tenant to cultivate the land, in that that is the main and dominant purpose of the lease. In that view of the matter, the aforesaid decision of this Court cannot be of any assistance to the respondent. On the contrary, it goes against him inasmuch as it has been laid down by J.B. Mehta, J. that for the purpose of applicability of sec. 43(1)(b), the original purpose of the lease at the time of granting the lease of land is material. As in the present case, the original purpose is found to be that of cultivation, being the main purpose or dominant purpose of the lease, the conclusion is inevitable that the provisions of sec.43A(1)(b) cannot apply to the disputed land. Hence, there is no room for doubt that provisions of secs.32 to 32R cannot be excluded. Consequently, it must be held that the Assistant Collector was justified when he directed the Mamlatdar to fix the purchase price of survey number 823 also and the Tribunal was patently in error

when it held that sec.42A(1)(b) was attracted in the present case. That finding of the Tribunal was obviously and ex-facie erroneous in law.

... ..."

7. I have heard both the sides, in detail. I have gone through the judgment of the Revenue Tribunal as well as of the Deputy Collector and Mamlatdar. On appreciation of evidence, all the three authorities have found that the lease in question is a composite lease and it cannot be said that the lease in question is given solely for the purpose of growing berry trees and plucking berry fruits. It has been found that the tenants used to cultivate the land also and they had grown Juvar, Bajra, Math, etc., in different years in the suit land over and above growing the berry trees. If the land in question is used by the tenant only for the purpose of growing the berry trees, the situation would have been different and in such case, perhaps, the application of the tenant was required to be rejected. However, it is an admitted fact that over and above plucking the berry trees, the tenant has carried out agricultural activity of a substantial nature and that fact is elaborately considered by the Tribunal in paragraph 9 of its order. The Tribunal has observed as under in paragraph 9 of its order :-

" ... ...

9. Similarly in the subsequent lease deed also, it is stated that the opponents are entitled to grow berry trees and to cultivate the suit land and that the applicants have not to obstruct the opponents whenever they make any use of the same. I, therefore, agree with the arguments advanced by learned advocate Shri Shah that the suit land is not given on lease only for growing berry trees but it is also given for cultivating other crops. On perusal of the copy of Pahani Patrak it is clear that the opponents had grown, Juvar, Bajra, Math, etc., in different years in the suit land, which is over and above growing the berry trees. Thus it is clear that the suit land was not leased out only for the purpose of growing trees but it was leased out for a mixed purpose of

growing trees as well as for cultivation. In this respect, there is direct ruling of His Lordship Justice Majmudr in the case of Vaghri Khodabhai vs. Mahamedhussein 23(1) G.L.R. p. 141, in which case the landlord has claimed possession of the land leased out to the tenant on the ground that the same was given on lease for growing mango trees only but when the Mamlatdar & A.L.T took local inspection he could find that over and above mango trees there was cultivation. Hence the Mamlatdar & A.L.T. held the opponent to be the tenant of the suit land. The appeal was dismissed by the Asstt. Collector, but the G.R.T allowed the revision application by holding that sec. 43A was applicable to that case. The petitioner, therefore, filed Special C.A. in the Hon'ble High Court. In the agreement of that case it was mentioned that the landlord was giving possession of the 3 survey numbers to the petitioners for the purpose of protection of trees and for cultivation as per the conditions mentioned in the agreement. His Lordship after discussing all the conditions mentioned in the said agreement observed as under :-

> "The purpose of the lease at the highest can be said to be a mixed or joint purpose or composite purpose of cultivation of the lands along with watering the existing trees and also rearing in future fruit trees if the tenant so desired."

His Lordship has further observed at page 148 as under :-

> "The recitals in the lease agreement in the present case indicated to the contrary and showed that he lease in the present case was for the purpose of cultivating this land and incidentally liberty was reserved to the tenant to rear up in future fruit trees if he so desired. Thus, the main purpose of the lease

was cultivation of crops. Under these circumstances sec.43A(1)(b) could never have been pressed in service so far as the disputed land was concerned."

At page 149 His Lordship has further observed as under :-

"as in the present case, the original purpose is found to be that of cultivation, being the main purpose for dominant purpose of the lease, the conclusion is inevitable that the provisions of sec. 43A(1)(b) cannot apply to the disputed land. Hence, there is no room for doubt that provisions of secs.32 to 32R cannot be excluded. Consequently, it must be held that the Asstt. Collector was justified when he directed the Mamlatdar to fix the purchase price of survey Number 823 also and the Tribunal was patently in error when it held that sec.43A(1)(b) was attracted in the present case. That finding of the Tribunal was obviously and ex facie erroneous in law.

... ..."

So far as the aforesaid finding is concerned, the same is essentially a finding of fact and all the authorities, i.e. the Mamlatdar, the Collector, as well as the Tribunal, have reached the aforesaid finding after appreciating the evidence and the lease deed and other documentary evidence on record. Under these circumstances, it is not possible for this Court to re-appreciate the evidence and even otherwise, considering the fact that the lease is composite and it cannot be said that the main purpose of the lease is only to grow berry trees, in my view, the claim of the tenant, to be declared as "deemed tenant", is required to be upheld. Under the aforesaid circumstances, there is hardly any substance in this petition. The view taken by the authorities is not required to be interfered with by this Court in its extraordinary jurisdiction under Article 227 of the Constitution of India. Hence, the petition is rejected. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)